IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16409 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IIYASBBHAI @ MUNNO @ MASHERO IBRAHIM VOHRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16409 of 2003

Ms. Banna Dutta for Mr AR SHAIKH for Petitioner No. 1

Mr A D Oza, Government Pleader, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 24.9.2003 passed by

respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner.

2. The allegation against the petitioner was that the petitioner was involved in five prohibition offences registered against him at Anand Prohibition Police Station, Borsad police station, Bhadran police station, Badran police station and Vidyanagar police station on 22.3.2003, 7.4.2003, 17.8.2003, 17.8.2003 and 9.9.2003 for possessing illicit foreign liquor without pass or permit. A proposal was made to the second respondent for detaining the petitioner and after following the procedure, the petitioner was ordered to be detained and he was actually detained by arresting him. The petitioner has challenged the aforesaid detention order mainly on the ground that the petitioner was not a bootlegger and there was no reason for respondent no.2 to detain him under the aforesaid provisions. It has also been contended that the petitioner has made representation to the Hon'ble Home Minister, State of Gujarat on 11.11.2003 and the representation has been considered and disposed of on 18.11.2003 and there is unexplained delay of about six days. It has also been contended that certain documents were demanded by the petitioner in his representation dated 11.11.2003 and they have not been supplied and, therefore, the petitioner's right to make representation under sub-clause (5) of Article 22 of the Constitution of India has been adversely affected. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be set aside and the petitioner may be set at liberty forthwith.

3. On receipt of the petition, rule was issued and in response to the service of notice of rule, Mr A D Oza, learned Government Pleader appears on behalf of the respondents. During the course of argument, learned Government Pleader has submitted affidavit of respondent No.2 which is taken on record. On the other hand, learned Advocate for the petitioner has submitted copy of a communication received by the petitioner from the Home Department dated 19.11.2003 stating that the Hon'ble Minister, Home Department has considered and rejected the representation of the petitioner on 18.11.2003. It is also taken on record. During the course of her argument, learned Advocate for the petitioner has contended that the petitioner could not be treated to be a person involving in activities threatening public order. In order to appreciate the said position, we may refer to

the grounds for detention at page 25 at Annexure 'C'. There it has been mentioned that the aforesaid five Prohibition offences have been registered against the petitioner and two of them were pending before the Court and three of them were pending at investigation stage. Learned Advocate for the petitioner has argued that merely because the petitioner was involved in offences punishable under the Bombay Prohibition Act, it could not be said that the activity of the petitioner is such which would threaten public order. In support of the said argument, learned Advocate for the petitioner has relied upon a decision of this Court dated 26.2.2004 rendered in Special Civil Application No.16542 of 2003 (Coram: Hon'ble Mr Justice N G Nandi). Here also the grounds for detaining the said petitioner was that he was involved in two cases under section 66 (1)(b) and section 65 (A)(E) and section 81 of the Bombay Prohibition Act. On appreciating the material before it, this Court observed that the detaining authority could not establish that there was a threat to Public order. That therefore, there was no justification with him for passing such an order against the detention of the petitioner. Accordingly, the said petition was allowed and the detention was held to be illegal.

4. In LPA No.223 of 2000 in Special Civil Application No.554 of 2000, this Court had an occasion to come across a similar case in which the petitioner was detained on account of registration of prohibition case against him. This Court had considered the pros and cons of the said matter and came to the decision that there was no credible material before the detaining authority in order to show that the alleged bootlegging activities of the petitioner resulted in public disorder or cause harm to the public health at large. Learned Advocate for the petitioner has argued that if liquor would be sold to so many persons, health of public at large would be adversely affected. In fact, there was no reason for the detaining authority to come to a finding that the activities of the petitioner could be a challenge to the public health at large. It seems that before the detaining authority, there was no credible material to come to a finding that the bootlegging activity of the petitioner would adversely affect the public at large.

5. In that view of the matter, it cannot be said that the alleged bootlegging activities of the petitioner in indulging sale of foreign liquor even on large quantity basis, would tantamount to threat to public order at large.

6. It has also been contended by the learned Advocate for the petitioner that though the representation was made by the petitioner on 11.11.2003 at page 34 Annexure 'D' the Hon'ble Minister, Home Department had decided the same on 18.11.2003. She has, therefore, argued that the delay has not been explained in consideration and disposal of the representation of the petitioner. It is not much in dispute that the representation was submitted on 11.11.2003 and it had reached the office of the Hon'ble Minister on 12.11.2003. A communication received from the Home Department by the present petitioner goes to show that the said representation was considered and disposed of by the Hon'ble Home Minister on 18.11.2003. This would mean that there was a gap of six days for consideration in disposal of the representation of the present petitioner. Learned G.P. has tried to argue that the Hon'ble Home Minister has referred the representation to his office and thereafter the matter was placed before him and therefore, there was some delay in disposal of the said representation. On the one hand, there is no material to show as to how the representation was processed in the Home Ministry of State of Gujarat. On the other hand, there is no affidavit from the office of the Hon'ble Home Minister on this point as to how the representation was processed there. In that view of the matter, it is very clear that the delay in disposal of the representation of the petitioner has not been explained.

7. This point stands squarely covered by a decision of the Hon'ble Apex Court rendered in the case of Rajammal v. State of Tamil Nadu, reported in AIR 1999 SC 684. There the matter related to Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offences and Slum Grabbers Act, 1982. There also the petitioner was detained and the Hon'ble the Supreme Court has observed that unexplained delay of 5 days in considering and disposing of the representation of the detenu would be fatal. It has further been observed that mere absence of Minister at Headquarters was not sufficient to justify the delay. In the present case we find that thee is a delay of nearly six days and the delay has not been explained. In that view of the matter, the further detention of the petitioner could not be treated to be legal. In above view of the matter, the bootlegging activities of the petitioner are not found to be a threat to the public order. On the other hand, the representation of the petitioner is not found to have been dealt with and disposed of within a reasonable time. The delay in disposal thereof, has not been explained.

In that view of the matter, further continuation of the detention cannot be treated to be legal. In above view of the matter, other grounds are not required to be touched. This clearly indicate that the detention order against the petitioner cannot be treated to be legal and valid and, therefore, it cannot be sustained. Consequently, the order of detention is required to be held to be illegal and, therefore, is required to be set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 24.9.2003 recorded by respondent no.2 and placed at Annexure 'A' at page 22 directing the detention of the petitioner is ordered to be set aside and the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. D.S. permitted.

[D P Buch, J.]

msp